
Site Address:	2 Seagull Lane, Emsworth, PO10 7QH		
Proposal:	Application for variation of condition 6 relating to access to unit 8 of Planning Permission APP/22/00155.		
Application Type:	Variation/Relief of Condition		
Application No:	APP/23/00627	Expiry Date:	14/09/2023
Applicant:	Mr Hall M&M Hall Family Pension Trust		
Agent:	Mr Thompson PWP Architects	Case Officer:	Tina Pickup
Ward:	Emsworth		

Recommendation: **GRANT PERMISSION**

1 Site Description

- 1.1 This is a section 73 application seeking to vary condition 6 of APP/22/00155 which in turn was for the redevelopment of the site with 3 No light industrial buildings split into 8 units, together with the retention and refurbishment of another unit on site.
- 1.2 The site description for that application was as follows:

The application site amounts to some 0.27 ha and has been compiled from Nos 2, 2A, 4 and 6 Seagull Lane and their associated hard standings and accesses. These are currently vacant light industrial and office buildings falling within use Class E (g). Most are single storey in scale, but number 6 is a converted two storey rendered building with pitched roof, sited centrally. All are old with ad hoc additions.

The existing units are accessed from Seagull Lane, an adopted cul-de-sac which is also a formal footpath linking to Brook Meadow Nature Reserve (a SINCR) and the River Ems to the east. There are double yellow lines within Seagull Lane and no turning head.

The application site is located on the south side of Seagull Lane and extends from the rear of Seagull Court flats to the west (and behind their garage block which fronts Seagull Lane), to another large commercial premises, Artec Engineering, to the east. The northern side of Seagull Lane is characterised by residential development, with the rear accesses and garages of the properties fronting Sultan Road directly opposite the site. To the south of the site lies the currently vacant former gas works site, which was allocated for housing in the withdrawn Havant Borough Local Plan, and now included in the Council's Housing Delivery Position Statement. The land slopes slightly down to the east, and generally the site is bounded by approximately 1.5m high brick walls with chain link fence with barbed wire top to 2m high, set above the wall. To the Seagull Lane frontage there is currently an older style flint and brick wall.

The site lies outside current day flood risk and only a small part of the eastern edge of the site lies within the future flood zone. Existing units on the site amount to a floor space of 948.4 sqm.

1.3 Condition 6 relates to the highway access for unit 8 and states:

No development hereby permitted, nor any related site clearance, shall commence on site until the unit 8 access site egress, including the footway and/or verge crossing has been constructed and lines of sight of 2.0 metres by 25.0m metres have been provided in accordance with Drawing Number 1012. The lines of sight splays shown on the approved plans shall be kept free of any obstruction exceeding 600mm in height above the adjacent carriageway and shall be subsequently maintained so thereafter.

Reason: *In the interests of highway safety and having due regard to policies CS16 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.*

2 **Planning History**

95/55248/001 - Renewal of planning permission 90/55248 in order to continue use for motor car body repairs and spray workshop on a permanent basis, PERM,29/06/1995

90/55248/000 - Renewal of temporary consent (29421/2) for motor car body repairs and spray workshop, ZHIS,12/09/1990

APP/20/00692 - Application for change of use from Class B2 (General Industrial) to D2 (Assembly & Leisure) and erection of new building to serve primarily as a boxing gym. , WD,18/01/2021

APP/22/00155 - Demolition of 2 & 2a Seagull Lane and warehouses 1, 2 and 4. Existing unit 6 Seagull Lane retained with external amendments including cladding and utility enclosure. Construction of 3No light industrial buildings split into 8No units., PERM,24/03/2023

3 **Proposal**

3.1 Application for variation of condition 6 relating to access to unit 8 of Planning Permission APP/22/00155.

3.2 It is noted that as originally submitted the application also included a request to remove conditions 8 and 10 which related to the requirement to submit a BREEAM pre-assessment that achieves a 'very good' rating and subsequent evidence of it being achieved. Due to an objection to this issue, see policy comments in section 5 below, this element of the application has been withdrawn and the application amended to relate solely to the highway matter of condition 6.

3.3 Condition 6 was worded as a pre-commencement condition requiring the access and visibility splays for unit 8 to be provided before work commenced. This application seeks to vary the timing of when this work is undertaken and proposes that unit 8 must not be used until the access and visibility splays have been provided instead.

4 Policy Considerations

National Planning Policy Framework
Havant Borough Council Borough Design Guide SPD December 2011
Havant Borough Council Parking SPD July 2016

Havant Borough Local Plan (Core Strategy) March 2011

CS14 (Efficient Use of Resources)
CS16 (High Quality Design)
CS17 (Concentration and Distribution of Development within the Urban Areas)
CS19 (Effective Provision of Infrastructure)
CS20 (Transport and Access Strategy)
DM14 (Car and Cycle Parking on Development (excluding residential))

Havant Borough Local Plan (Allocations) July 2014

AL1 (Presumption in Favour of Sustainable Development)
AL2 (Urban Area Boundaries and Undeveloped Gaps between Settlements)

Emsworth Neighbourhood Plan Post Examination Version 2020

ENP_W1 (Employment Premises & Design Quality)
ENP_D1 (General Design Policy)

Listed Building Grade: Not applicable.
Conservation Area: Not applicable.

5 Statutory and Non Statutory Consultations

Building Control

Cond 6

Building Regulation consent required - Section 80 Demo notice needed if building over 50m cubic

Cond 8 & 10

Not controlled under Building Regs no comment

Crime Prevention

None received

Ecologist

I have no comments to make on ecological matters.

Economic Development

None received

Environment Agency

None received

Environmental Health

None received

Hampshire Highways

The applicant is seeking to vary condition 6 of planning consent APP/22/00155 which reads as follows:

No development hereby permitted, nor any related site clearance, shall commence on site until the unit 8 access site egress, including the footway and/or verge crossing has been constructed and lines of sight of 2.0 metres by 25.0m metres have been provided in accordance with Drawing Number 1012. The lines of sight splays shown on the approved plans shall be kept free of any obstruction exceeding 600mm in height above the adjacent carriageway and shall be subsequently maintained so thereafter.

Reason - In the interests of highway safety and having due regard to policies CS16 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework

The applicant is proposing to vary this condition to the following:

The access to unit 8 must not be used until the site egress, including the footway and/or verge crossing has been constructed and lines of sight of 2.0 metres by 25.0m metres have been provided in accordance with Drawing Number 1012. The lines of sight splays shown on the approved plans shall be kept free of any obstruction exceeding 600mm in height above the adjacent carriageway and shall be subsequently maintained so thereafter.

The Highway Authority are satisfied with the revised condition wording and therefore provide no objections to the variation of condition 6.

Local Lead Flood Authority HCC

No comments to make

Planning Policy

Context and History

The applicant is seeking to remove condition 8 of APP/23/00627 which was granted planning permission in March 2023 for 'Demolition of 2 & 2a Seagull Lane and warehouses 1, 2 and 4. Existing unit 6 Seagull Lane retained with external amendments including cladding and utility enclosure. Construction of 3No light industrial buildings split into 8No units'

Condition 8 states: Development of the 3No light industrial buildings hereby permitted shall not be commenced until a BREEAM Pre-Assessment has been submitted to and approved in writing by the Local Planning Authority. The assessment shall demonstrate that the development will attain a minimum standard of 'very good' BREEAM rating.

The development shall be carried out only in accordance with the details the subject of the assessment.

Reason: To ensure that the development is carried out in accordance with Policy CS14 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

This condition was attached to the original permission based on policy CS14 of the Havant Borough Local Plan (Core Strategy) 'Efficient Use of Resources'. The policy states that '*Planning permission will be granted for development that 3. On completion, unless proven to be financially or technically unviable, meets the following standards....Multi occupational homes and non residential development over 500sqm-BREEAM standard 'very good'.*

As such, the development would be expected to meet these standards and condition 8 was included with permission APP/23/00627. No evidence was submitted as part of the application's determination to show that there are material considerations which would render this unable to be achieved.

Assessment

The applicant has submitted a BREEAM assessment and covering letter relating to condition 8. This states that the development can only achieve a BREEAM rating of 'PASS' and cannot meet the minimum BREEAM standard 'Very Good'. The applicant has said this is due to the development being a 'simple building' and not being able to meet enough of the criteria within the assessment to achieve higher standard than PASS.

Although the submitted assessment shows how the building can achieve a PASS rating, it does not show how or why other methods or criteria within the assessment could not be used to achieve a higher rating.

In order to consider the development as a 'simple building' which by definition is a building with a limited to no energy carbon output, certification and official confirmation from the BRE that this development meets with this classification and is formally recognised as a 'simple building' would need to be provided. This has not been provided and at this time, an industrial building would be considered to have a great energy output then those which would typically meet a description of a 'simple building'.

The applicant has therefore been asked to submit further information to support these two points and unfortunately no evidence in the form of certification or confirmation as to why additional criteria couldn't be used has been submitted.

Conclusion

The issues raised would have been expected to be considered as part of the determination of the planning application. The applicant has not been able to submit the necessary evidence required by the Local Planning Authority. Until such a time where this is provided it is considered there is insufficient evidence to justify that the building would not be able achieve a standard 'Very Good'. As such, a policy objection would arise at this time on the basis that the application is contrary to policy CS14.

Southern Gas Network

None received

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 104

Number of site notices: 1

Statutory advertisement: Not applicable.

Number of representations received: 0

Comment	Officer Comment
None received	

7 **Planning Considerations**

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact of changing timing of access provision

(i) Principle of development

7.2 This is a Section 73 application to vary a condition and if approved, its granting effectively re-issues the original permission and must repeat and update the relevant conditions unless they have been discharged. In this case development has not yet commenced and no other conditions have yet been discharged. This application seeks an amendment to the wording of condition 6 (timing of access for unit 8). The determination of this application must consider the impact of the proposed changes only and does not need to re-consider the whole development which already has planning permission under APP/22/00155.

7.3 The application site is situated within an existing industrial area and the determination of APP/22/00155 included detailed consideration of a Transport Statement, TRICS analysis, swept path analysis and parking layout. The principle of the highway implications of the development are not for re-consideration, just the timing of the access provision for unit 8.

(ii) Impact of changing timing of access provision

7.4 Proposed Unit 8 is the western most unit on the site which is removed from the main L shaped units 1 - 7 which are to be accessed separately via a one way route. Unit 8 would have its own separate access which would run adjacent a block of private residential garages that front Seagull Lane. Currently there is an old industrial building to the immediate east of the access for unit 8 which is to be demolished to make way for the redevelopment.

7.5 The wording of condition 6 requires the access for unit 8 to be constructed and lines of sight provided before development, including any site clearance, commences. Given that the existing industrial building needs to be demolished before the access and visibility splays can be formed to unit 8, then the timing requirement of this condition cannot be met. The applicants are instead suggesting that the agreed access arrangements and visibility splays are provided before unit 8 is used. No other changes are proposed and the same drawing number detailed.

7.6 This is considered a reasonable and necessary change to condition 6 to enable the development to proceed in an appropriate chronological order. The change in timing would not impact access to the finished development. The Highway Authority have no objection to the amendment to condition 6.

8 **Conclusion**

- 8.1 This is a Section 73 application and its granting effectively re-issues the original permission and must repeat or amend accordingly the relevant conditions unless they have already been discharged. It is considered that it would be appropriate to vary condition 6 of APP/22/00155 to ensure the access and visibility splays are provided before first use of unit 8. It must also be noted that Sec 73 applications do not extend the 3 year period to start development and so condition 1 must also be amended with the same expiry date as APP/22/00155.
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9 **RECOMMENDATION:**

That the Head of Place be authorised to **GRANT PERMISSION** for application APP/23/00627 subject to the following conditions

- 1 The development must be begun not later than 24th March 2026.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2 The development hereby permitted shall be carried out in accordance with the following approved plans:

Existing Site Plan - Drawing number 1000 Rev A
Proposed Plans Units 6 - 7 - Drawing number 2009 Rev A
Proposed Plans Unit 8 - Drawing number 2012 Rev A
Proposed Plans Units 1-5 - Drawing number 2008 Rev A
Proposed Elevations Units 1- 5 - Drawing number 3008 Rev B
Proposed Elevations Units 6-7 - Drawing number 3009 Rev B
Proposed Elevations 6 Seagull Lane - Drawing number 3013 Rev C
Proposed Elevations Unit 8 - Drawing number 3012 Rev B
Proposed Street Scene - Drawing number 3007
Proposed Visibility Splays - Drawing number 1012
Proposed Boundary Treatment Plan - Drawing number 9000
Cycle Store Location - - Drawing number 9001
BXM/WAR Cycle Shelter Specification
Materials Schedule
Elevation Material Example - Drawing number 3014 Rev C
Flood Risk Report by PWP Architects dated May 2022
Planning, Design and Access Statement by PWP Architects dated February 2022
Ecological Impact Assessment by Ecosa dated August 2022
Transport Statement by Bright Plan dated May 2022 with amended Max Legal Length Articulated and Swept Path Analysis - Drawing Number 6442-005 Rev A

Reason: To ensure provision of a satisfactory development.

- 3 Prior to the commencement of any specific phase of development approved by this planning permission (other than demolition, site clearance, or any other date or stage in development as may be agreed in writing with the Local Planning Authority), an assessment of the nature and extent of contamination at the site, whether originating from within or outside the curtilage, shall be submitted to and approved in writing by the Local Planning Authority. The assessment shall be undertaken by competent persons, and the findings presented as a written report.

The assessment may comprise separate reports as appropriate, but unless specifically excluded in writing by the Local Planning Authority, shall include;

- 1) A site walk-over survey &/or sufficient desk-based research to identify;
 - All relevant previous uses of the site,
 - Potentially significant features and contaminants associated with those uses
 - Uncertainties relating to previous use or associated potential contaminants
 - A conceptual site model identifying all relevant sources, exposure pathways and receptors, and;
 - A summary of potentially unacceptable risks arising from contamination at the site.
- 2) Site investigation based on (1), to provide sufficient data and information to adequately identify & characterise any physical contamination on or affecting the site, and to inform an appropriate assessment of the risks to all receptors that may be affected, including those off site.
- 3) The results of an appropriate risk assessment based upon (1) & (2), and where unacceptable risks are identified, a Remediation Strategy that includes;
 - appropriately considered remedial objectives,
 - an appraisal of remedial &/or risk mitigation options, having due regard to sustainability, and;
 - clearly defined proposals for mitigation of the identified risks.
- 4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out any Remediation Strategy required under (2) are complete, identifying any requirements for longer-term monitoring of pollutant linkages, maintenance of engineered mitigation measures, and arrangements for contingency action.

All elements shall be adhered to unless agreed in writing by the Local Planning Authority

Reason: Contamination may be present at the site as a result of both previous land uses (&/or activities) at the development land and adjacent that could pose a risk to buildings and future employees of the completed development &/or to controlled waters. This is in line with Policy DM10 of the Havant Borough Local Plan (Core Strategy) 2011, Policy DM17 of the Havant Borough Local Plan (Allocations) 2014, and paragraphs 183-185 of the National Planning Policy Framework.

- 4 No development hereby permitted, nor any related site clearance, shall commence until an assessment of potential noise and vibration arising during construction has been prepared in accordance with BS 5528: Parts 1 and Part 2, 2009 and A1:2014 - Noise and Vibration Control on Construction and Open Sites, and has been submitted to and approved in writing by the Local Planning Authority. The assessment shall also include details of any piling methods to be used. All the above works shall thereafter be carried out in accordance with the approved assessment.

Reason: To minimise disturbance to all nearby sensitive receptors, and to ensure the amenities of nearby residential properties are not impacted upon by any external noise levels and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 5 No development hereby permitted, nor any related site clearance, shall commence until a construction method statement has been submitted to and approved in writing by the Local Planning Authority, which shall include:
- (a) A programme of and phasing of demolition (if any) and construction work;
 - (b) The provision of long term facilities for contractor parking;
 - (c) The arrangements for deliveries associated with all construction works;
 - (d) Methods and phasing of construction works;
 - (e) Access and egress for plant and machinery;
 - (f) Protection of pedestrian routes during construction;
 - (g) Location of temporary site buildings, compounds, construction material, and plant storage areas;

Thereafter, demolition and construction work shall only take place in accordance with the approved method statement.

Reason: To safeguard the amenities of the locality and in the interests of traffic safety, having due regard to policies CS16, CS20 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011.

- 6 The access to unit 8 must not be used until the site egress, including the footway and/or verge crossing has been constructed and lines of sight of 2.0 metres by 25.0m metres have been provided in accordance with Drawing Number 1012. The lines of sight splays shown on the approved plans shall be kept free of any obstruction exceeding 600mm in height above the adjacent carriageway and shall be subsequently maintained so thereafter.

Reason: In the interests of highway safety and having due regard to policies CS16 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 7 No development hereby permitted shall commence until plans and particulars specifying the layout, depth and capacity of all foul and surface water drains and sewers proposed to serve the same, and details of any other proposed ancillary drainage works/plant (e.g. pumping stations) have been submitted to and approved in writing by the Local Planning Authority. Unless agreed otherwise in writing by the Local Planning Authority, the development hereby permitted shall not be brought into use prior to the completion of the implementation of all such drainage provision in full accordance with such plans and particulars as are thus approved by the Authority.

Reason: To safeguard the amenities of the locality and ensure that all such drainage provision is constructed to an appropriate standard and quality and having due regard to policies and proposals CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 8 Development of the 3No light industrial buildings hereby permitted shall not be commenced until a BREEAM Pre-Assessment has been submitted to and approved in writing by the Local Planning Authority. The assessment shall demonstrate that the development will attain a minimum standard of 'very good' BREEAM rating. The development shall be carried out only in accordance with the details the subject of the assessment.

Reason: To ensure that the development is carried out in accordance with Policy CS14 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 9 No above ground development shall commence until a detailed soft landscaping scheme for the identified planters and areas of landscaping shown on Drawing Number 1012 has been submitted to and approved in writing by the Local Planning Authority. Such scheme shall specify the distribution and number of plants, their species and planting sizes, and timing provisions for completion of the implementation of all such landscaping works. You are advised to use native species where possible to benefit pollinating invertebrates.

The implementation of all such approved landscaping shall be completed in full accordance with such approved timing provisions. Any tree or shrub planted or retained as part of such approved landscaping scheme which dies or is otherwise removed within the first 5 years shall be replaced with another of the same species and size in the same position during the first available planting season.

Reason: To ensure the appearance of the development is satisfactory and having due regard to policies CS11 and CS16 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 10 Within 6 months of the 3No light industrial buildings hereby approved first becoming occupied, written documentary evidence proving that the development has achieved at minimum 'Very Good' against the BREEAM Standard in the form of a post construction assessment and certificate as issued by a legitimate BREEAM certification body shall be submitted to the Local Planning Authority for its approval.

Reason: To ensure the development contributes to sustainable construction in accordance with Policy CS14 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 11 Prior to the occupation of any relevant part of the permitted development, any verification report required in accordance with Condition 3 shall be submitted to and approved in writing by the Local Planning Authority.

The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan, and must demonstrate that site remediation criteria have been met.

Where longer-term monitoring of pollutant linkages is identified as being necessary, the report shall clearly set out plans for monitoring, provision for maintenance, relevant triggers and contingency actions (a “long-term monitoring and maintenance plan”).

The long-term monitoring and maintenance plan shall be implemented as approved.

Reason: Contamination may be present at the site as a result of both previous land uses (&/or activities) at the development land and adjacent that could pose a risk to buildings and future employees of the completed development &/or to controlled waters. This is in line with Policy DM10 of the Havant Borough Local Plan (Core Strategy) 2011, Policy DM17 of the Havant Borough Local Plan (Allocations) 2014, and paragraphs 183-185 of the National Planning Policy Framework.

- 12 The car parking, servicing and other vehicular access arrangements shown on the approved plans to serve the development hereby permitted shall be made fully available for use prior to the development being first brought into use and shall be retained thereafter for their intended purpose.

Reason: In the interests of highway safety and having due regard to policy DM13 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 13 No externally visible or audible plant, machinery or structures required for ventilation or filtration purposes shall be installed at the premises until and unless details of the external appearance and acoustic performance of the same have been submitted to and approved in writing by the Local Planning Authority.

Reason: To safeguard the amenities of the locality and/or occupiers of neighbouring property and having due regard to policies CS11.4, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 14 No flood lighting or other form of external lighting scheme shall be installed at any unit or within the site, unless it has first been approved by the Local Planning Authority. Such details shall include location, height, type and direction of light sources and intensity of illumination. Any lighting scheme agreed in writing by the Local Planning Authority shall not thereafter be altered without prior consent other than for routine maintenance, which does not change its details.

Reason: To protect the occupants of nearby residential properties, from light disturbance / nuisance, and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 15 No lorries or articulated vehicles shall access unit 8 at any time.

Reason: The constrained width of access and available turning for unit 8 are limited and could result in a highway safety and amenity concern, having regard to policies CS16 and CS20 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 16 Development shall proceed in accordance with the ecological avoidance, mitigation and enhancement measures detailed in the Ecological Impact Assessment (ECOSA, August 2022) unless otherwise agreed in writing by the Local Planning Authority. This shall include the provision of 3 Vivara Pro WoodStone bat boxes, or similar, and 2 integrated WoodStone House Sparrow Terraces, and two Ibstock Swift Bricks, or similar.

Reason: To provide ecological protection and enhancement in accordance with the Conservation Regulations 2017, Wildlife & Countryside Act 1981, NPPF, NERC Act 2006 and Policy CS11 of the Havant Borough Local Plan (Core Strategy) 2011.

- 17 Notwithstanding the provisions of any Town and Country Planning General Development or Use Classes Order, the units hereby approved shall only be used for any use falling within Class E(c) (financial & professional services), Class E(g) (light industrial), and Class B8 (storage and distribution) of the Town and Country Planning (Use Classes) (Amendment) Order 2020. No Class E(a) (retail) shall take place from any unit except ancillary trade counters.

Reason: To ensure the uses at the site are appropriate for the site's location away from the town centre; compatible with adjacent residential dwellings having no adverse impact on neighbouring amenity; having due regard to policies CS4, CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.

- 18 The hereby approved units shall only be open for trade or business between the hours of 08:00 and 18:00 Monday to Saturdays with no activity on Sundays or Bank Holidays.

Reason: To protect the amenities of nearby residential properties and having due regard to policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011 and the National Planning Policy Framework.